

Waivers	First Name	Last Name	Claim Number
			W-15-0007
Amount	OGC Received Date	Assigned To	Assigned Date
\$104975.37	02/27/2015	Richard Feldman	03/03/2015
EPA Decision	EPA Decision Date	Amount Approved	Status
APPROVED	03/11/2015	\$8216.46	CLOSED
Appeal	Comments		
No	approved waiver for \$8,216.46; denied waiver for \$86,758.91		
Type			
Retention Allowance Payments			

Attachments

■,

This email is in response to your waiver request submitted to me on February 27, 2015. The posture of this matter is somewhat unique in that you previously filed an informal and formal grievance relating to the establishment of the debt in connection with your retention allowance payments. As a result, there is an extensive record that I reviewed. I am adjudicating this waiver request pursuant to my delegated authority as EPA's Claims Officer and in accordance with EPA Order 3155.1. For the reasons set forth below, I am granting your waiver for the pay periods ending September 27, 2008 through January 31, 2009 for the gross amount of \$8216.46; a waiver for the remaining debt of \$96, 758.91 covering the pay periods ending Feb. 14, 2009 through Feb. 23, 2013 is denied.

Briefly stated, while you were working in the ■ in 2002, EPA paid you a retention allowance of 10%; the retention allowance was later increased to 18% in 2007. The retention allowance was based on you unique skills in relation to a "drinking water data warehouse." Although the record contains documentation from OW dated March 13, 2007, requesting that your retention allowance continue for up to three years, evidently the Agency did not approve this request. Significantly, in September 2008, you were selected for a four month detail to serve as an acting branch chief in one of branches in the ■. The Agency continued to pay the retention allowance during your detail and continued to pay your retention allowance after you were selected as ■.

Under 5 U.S.C. §5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation

or a lack of good faith on the part of the employee. The standard employed to determine whether a person was at fault in accepting overpayments is whether, under the circumstances involved, an employee knew or a reasonable person should have known or suspected that he/she was paid more than he/she was entitled to receive. 66 Comp. Gen. 124 (1986); Defense Office of Hearings and Appeals (DOHA) Claims Case No. 97122313, Feb. 24, 1998. Waiver is precluded if the employee is aware or should have been aware that he/she was being overpaid. B-271308, April 18, 1996. In the present case, I find that the erroneous payments were caused by Agency administrative error. Therefore, the only issue before me is whether the record demonstrates a sufficient basis for me to conclude that you were not at fault and the debt caused by the erroneous overpayments of salary should be waived.

Partial Waiver

As noted above, I am granting a waiver for the period covered by your detail to OIC. The record contains an email to you from a human resources specialist dated Sept. 25, 2008 stating that your detail would be effective from "9/14/2008, not-to exceed 1/12/2009." The email expressly provided a new salary rate for the temporary promotion you received to GS 15, Step 2 "(with retention allowance)" for a salary of \$140,000+. My review of the extensive record in this case, did not reveal information provided to you or otherwise indicate that the retention allowance would not be continued during your detail. I find it reasonable for an employee to believe that a retention allowance may continue during a detail to another EPA organization, as the employee remains an employee of his "home office" during a temporary detail. Therefore, I have approved a waiver for the pay periods covered by your detail..

Remaining Debt and Waiver

In this case, the record contains a February 3, 2009 email informing you that you had been tentatively selected for the [REDACTED]. This email from the Las Vegas Human Resources Team did not mention either the retention allowance or your starting salary. It did mention the Grade and Step, GS 15, Step 2. The next day, February, 4, 2009 in an email from a human resources specialist you were notified that the retention allowance for your 2008 detail "should have been rescinded." Moreover, you state that a human resources specialist verbally advised you "that [the offered position as branch chief] would not include a retention allowance." The record also indicates that you were aware "the job paid \$124,858 which was significantly less than the approximately \$141, 400 I would make if I returned to my old job in [OW]."

Finally, a formal offer letter was sent to you for the [REDACTED] [REDACTED] letter stated your grade as a GS 15 Step 2 and also stated your salary would be \$124,858. The letter did not reference a retention allowance. In fact, you already had assumed the [REDACTED] [REDACTED]

The legal standard in waiver cases is whether an employee knew or a reasonable person should have known or suspected that he/she was paid more than he/she was entitled to receive. The entirety of the extensive record in this case leads me to conclude that, at the very least, you should have suspected that the retention payments should not have been paid upon your assumption of [REDACTED]. The record demonstrates that you assumed that the issue of the retention allowance had either been resolved, as you continued to receive it, or that you dutifully informed your managers of the issue and your concern. I am not questioning these facts. The fact remains that you continued to receive retention allowance payments for 4 years after you received the Feb. 3, 2009 email indicating the retention allowance should not have been paid to you during your OIC detail and after your receipt on February 4, 2009, and your conversation with a human resources specialist that the [REDACTED] [REDACTED] would not include retention payments. In addition, neither the Feb. 3, 2009 email nor the formal offer letter mentioned retention allowance payments. Finally, the salary offered to you was considerably less than what you would have expected had the OIC position included a retention allowance.

Where, as here, an employee receives documents that put him on notice that payments he is receiving are in error, the employee is considered at fault and waiver cannot be granted. B-271308, April 18, 1996. While I understand you made attempts to inform your managers and to some degree you reasonably may have discounted information you received from human resources personnel, I nevertheless believe you had ample notice that a significant question surrounding the propriety of retention allowance payments existed from the time you began as branch chief and during your tenure in OIC. My belief is buttressed by the fact that you were aware your salary in OIC would be considerably less than what you were paid in OW which included a retention allowance, and the fact that the basis for the retention allowance you received in OW would not likely exist when you assumed a permanent position, as opposed to a detail, in OIC. It is not against equity and good conscience to recover indebtedness where the recipient of erroneous payments knew or should have known that the payments were erroneous, and the knowledge of such overpayments carries with it the obligation to return that amount. DOHA Claims case No. 97122313 (February 24, 1998); B-272194, Aug. 27, 1996. A waiver for the

remaining portion of your debt is denied.

I realize this retention allowance issue and the resulting overpayments have caused you great inconvenience. Under 40 C.F.R. Part 13.11(e)(iii), I have the delegated authority to waive all or part of the interest, penalty and administrative charges which have accrued or may accrue on this debt. In this regard, OCFO should work with the Interior Business Center to waive any portion that will be collected attributable to interest, penalty and administrative charges.

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